HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Application No. 354 of 2003
Zila Panchayat Uttarkashi
District - Uttarkashi
Through its Upper Mukhya Adhikar
Uttarkash ....Applicant

Versus

1. State of Uttaranchal

2. Smt. Vimla Devi
W/o Late Shri Bhagat Ram Dobhal
R/o Gyansu, Manikaranika Marg
Uttarkash
District - Uttarkash .....Opp. parties

~~Approved for reporting.~~
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Not approved for reporting.

Date of Decision 5th April, 2005.

Initial of Judge.

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Smt. Rajendr Kotiyal, learned counsel for the applicant.
Sri Navnit Kaushik, learned counsel for the opposite party no.2

Hon'ble B.C. Kandpal. J.

This petition u/s 482 Cr.P.C. has been filed by Zila Panchayat, Uttarkashi for quashing the proceedings in criminal case no. 115 of 2003 Smt. Vimla Devi Vs. Zila Panchayat, Uttarkashi pending before the court of Special Judicial Magistrate, Uttarkashi.

Brief facts of the case are that one Vimla Devi filed a civil suit agaisnt the Zila Panchayat, Uttarkashi in the year 1984 which was numbered as 34 of 1984 and Smt. Vimla Devi won the suit vide judgment and order dated 12.09.1985.

During the pendency of that suit, Zila Panchayat, Uttarkashi constructed a building over the land in question. Therefore, during the execution proceedings, possession of the building in question including the land was handed over to Smt. Vimla Devi on 08.11.1985 thereafter Smt. Vimla Devi gave that accommodation to some of her tenants.

The employees of Zila Panchayat office thereafter filed an application u/s 47 of the C.P.C. before the District Judge for the restoration of the possession of the building. The learned District Judge vide order dated 21.02.1986 directed that the Zila Panchayat office should remove its remaining sand and other articles from the spot.

The record reveals that thereafter, the officials of the Zila Panchayat, Uttarkashi office anyhow came into forceful possession over the building in question by throwing the household of the tenants residing over there. Subsequently when Vimla Devi came to know of this fact, she issued notices to the Zila Panchayat, Uttarkashi for restoring the possession but it could not be materialsed. Therefore, Smt. Vimla Devi filed a complainant u/s 147, 352, 448 and 452 I.P.C. alongwith the prayer that the possession of the building in question should be restored in her favour.

On the aforesaid complaint filed by Smt. Vimla Devi, the evidence was adduced by the officials of the Zila Panchyat, Uttarkashi who were main accused in the complaint and also adduced evidence in their support. The learned Chief Judicial Magistrate, Uttarkashi vide judgment and order dated 18.12.1987 came to the conclusion that the accused who were officials of the Zila Panchayat office were held responsible for committing offence u/s 147/148 I.P.C. The learned trial court vide the same judgment and order also observed that the prayer made by the complainant u/s 456 Cr.P.C. for restoration of the possession pertaining to the land as well building in question was justified hence, the trial court also directed that the possession of the land as well as the building in question should be restored in favour of Smt. Vimla Devi and in case if the police force is required for the purpose of restoration of the possession, the same should be provided. The copy of this order was sent to the Station Officer, Police Station concerned.

The official of the Zila Panchyat, Uttarkashi preferred the appeal against the judgment and order passed by the Learned Chief Judicial Magistrate before the court of Sessions Judge, Uttarkashi who after hearing learned counsel for the parties and having perused the entire evidence on record was pleased to dismiss the appeal vide judgment and order dated 30.01.1989.

The accused after being unsuccessful in the appeal from the court of Sessions Judges, Uttarkashi preferred the criminal revision before the Hon'ble Allahabad High Court which was transferred to this court after creation of the new State and this court vide judgment and order dated 31.01.2003 dismissed the revision.

After the dismissal of the revision by this court, Smt. Vimla Devi moved an application before the court of learned Chief Judicial Magistrate on 07.11.2003/11.11.2003 u/s 456 Cr.P.C. for restoration of possession pertaining to land as well as the building in question.

Learned Chief Judicial Magistrate vide judgment and order dated 18.11.2003 directed that the application be registered and the notices be issued to the opposite parties.

The petitioner, i.e., Zila Panchyat, Uttarkashi, has therefore, challenged the proceedings of Misc. case no. 115 of 2003 pending before the court of learned Chief Judicial Magistrate with the contention that the proceedings pending before the court of Chief Judicial Magistrate is a clear cut abuse of process of court.

It has been argued by the learned counsel for the petitioner that the Magistrate had no power to take cognizance u/s 456 Cr.P.C. after the lapse of one month.

Keeping in view of the arguments raised by the learned counsel for the petitioner, I perused the record of this case and I come to the conclusion that this argument is absolutely devoid of any force.

The record reveals that the Learned Chief Judicial Magistrate vide order dated 18.12.1987 has clearly observed that the accused persons are convicted u/s 147/448 of the I.P.C. Learned Chief Judicial Magistrate has also vide the same judgment and order directed that the possession of land as well as building in question be restored in favour of Smt. Vimla Devi. Learned Chief Judicial Magistrate also issued direction to the Police Station Kotwali in this regard. The record further reveals that the order was challenged by way of appeal and the Appellate Court also dismissed the appeal. The Appellate Court while dismissing the appeal has also observed that the direction issued by learned Chief Judicial Magistrate regarding the restoration of the possession of Smt. Vimla Devi over the house and plot in question u/s 456 Cr.P.C. is also confirmed and the Police is directed to restore the possession in favour of Smt. Vimla Devi as directed by learned Chief Judicial Magistrate by its order dated 18.12.1987. It is thus quite clear that the Appellate Court had also confirmed the judgment and order passed by the learned Chief Judicial Magistrate pertaining to the provisions of Section 456 of Cr.P.C.

The perusal of the judgment passed by this court dated 31.10.2003 in Criminal revision no. 186 of 1989 (new no. 802 of 2001) also revelals that this court come to the conclusion that the judgment and order passed by both the courts below were based on sound assessment of the evidence. This court has specifically observed in the judgment dismissing the revision vide order dated 31.10.2003 follows:

"The appeal was preferred by the revisionist and the learned Sessions Judge, Uttarkashi re-assessed the entire evidence but found that the appreciation of the same has been made by the learned CJM in proper prospective thereby drawing inferences in favour of the complainant.

The learned Judge therefore did not find any infirmity in the judgment of the learned CJM and dismissed the appeal. The learned Sessions Judge also affirmed the direction as given u/s 456 of the Cr.P.C, and directed the police to restore the possession of plot no. 2836 and building existing thereon as was directed by the learned CJM by its order dated 18.12.1987.

In vies of above, it is evident that there is absolutely no perversity in the appreciation of the evidence by the courts below. In fact, there have concurrent findings against the revisionist as regards the offence committed by them and therefore there being no merit in this revision, the same is liable to be dismissed.

The revision is hereby dismissed."

Therefore, in the aforesaid findings recorded by this court, it is quite clear that no perversity was found by this court in the judgment and orders passed by the court below. The orders passed by the court below pertaining to the direction issued u/s 456 Cr.P.C. obviously merged in the order of the revision and this revision was decided by this court on 31.1.02003.

The record further reveals that after the revision was dismissed by this court on 31.10.2003, Smt. Vimla Devi filed an application before the court of learned Chief Judicial Magistrate u/s 456 Cr.P.C. on 07.11.2003 / 10.11.2003, i.e. apparently within a period of one month. Smt. Vimla Devi, opposite party no. 2 in this petition has clearly reiterated all the facts therein. Therefore, I am of the definite view that the application u/s 456 Cr.P.C. filed by the opposite party no.2, Smt. Vimla Devi can not be said to be beyond time.

Perusal of the record shows that the learned Magistrate by registering the case and numbering the application as Misc. Criminal case 115 of 2003 has obviously committed a mistake and this amount to abuse of

process of court. Registration of the case on an application moved by the opposite party no. 2, Smt. Vimla Devi instead of compliance of the direction issued by the court on the previous occasion shows nothing but this aspect that the Magistrate was ignorant about the procedure. What the Magistrate should do in there circumstances that he had to simply issue the direction to the police station concerned for compliance of the previous orders passed by this court in this regard. The Magistrate by registering the case has compelled the opposite party, Smt. Vimla Devi to play a second inning and it is obvious from the perusal of the record that Smt. Vimla Devi has been running from pillar to post since 1983 for taking the possession of the disputed land and building but after having played a long inning in this regard and getting the orders of the court in her favour she has not been able to enjoy its fruits by taking the possession back and this situation can be said nothing but the cruelty of the destiny against her.

I come to the conclusion that it is a fit case in which the specific direction to the learned Special Judicial Magistrate should be issued for complying the orders passed by the court concerned previously by which the directions have been issued u/s 456 Cr.P.C. for restoration of the decision in favour of Smt. Vimla Devi.

On the assessment of the facts and circumstances of the case, I come to the conclusion that the proceedings in Criminal Case No. 115 of 2003 Smt. Vimla Devi Vs. Zila Panchyat, Uttarkashi are liable to be quashed. The learned Chief Judicial Magistrate instead of proceeding further in the aforesaid criminal case should issue the directions to the police of concerned Police Station, Uttarkashi for restoration of the possession in favour of Smt. Vimla Devi in compliance of the orders passed by the learned Chief

Judicial Magistrate, learned Sessions Judge as well as by this court previously.

With the aforesaid observation, this petition is disposed of.

(B.C. Kandpal, J.)

5th April, 2005
Shiv